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and M. of the second part, and that for the consideration of each of one part of the estate of S. the party of the first part granted unto the party of the second part the described tract of land, "with covenants of general warranty, unto the said M. during her lifetime, then at her decease to" her son. M. was S.'s widow, and when the deed was executed, she and her son named in the deed were living together on the tract, and all of the other heirs had by deed of partition received their share of S.'s land, so that, unless the son named took a remainder under the deed, he would receive none of his father's estate. Held, that M. took a life estate in the land, with remainder to the son named in fee.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 360-365, 416-435; Dec. Dig., § 129.\* 4 Va.-W. Va. Enc. Dig. 437.]

Error to Circuit Court, Buchanan County.

Action by John C. McCoy against P. L. Johnson and another, committee for Samuel M. Smith. Judgment for plaintiff, and defendants bring error. Reversed and remanded for new trial.

*Greever & Gillispie* and *M. O. Lits*, for plaintiffs in error.

*Chase & Daugherty* and *S. M. Coulling*, for defendant in error.

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ROANOKE RY. & ELECTRIC CO. v. CARROLL.

Sept. 14, 1911.

[72 S. E. 125.]

**1. Street Railroads (§ 93\*)—Injuries to Persons on Track—Duty on Seeing Persons on Track.**—A motorman is not obliged to stop his car merely because he sees a pedestrian approaching the track, as it is reasonable to assume that he will stop and wait for the car to pass, and not attempt to cross immediately in front of it.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig., §§ 195-200, 203; Dec. Dig., § 93.\* 12 Va.-W. Va. Enc. Dig. 845; 4 Va.-W. Va. Enc. Dig. 140.]

**2. Negligence (§ 83\*)—"Last Clear Chance."**—The doctrine of the last clear chance rests upon the principle that there is something in the plaintiff's condition or situation to admonish the defendant that he is not able to protect himself. It is the doctrine of prior and subsequent negligence, or remote and proximate cause, and presupposes the intervention of an appreciable interval of time between the prior negligence of the plaintiff and the subsequent negligence of the defendant. It applies notwithstanding the contributory negligence of the plaintiff when the defendant knows, or by the exercise of ordinary care ought to know, of plaintiff's danger, and

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

fails to do something which it has power to do to avoid the injury, or when the plaintiff is in some position of danger from a threatened contact with some agency under the control of the defendant, when the plaintiff cannot and the defendant can prevent a resulting injury.

[Ed. Note.—For other cases, see Negligence, Cent. Dig., § 115; Dec. Dig., § 83.\* 10 Va.-W. Va. Enc. Dig. 389.

For other definitions, see Words and Phrases, vol. 5, p. 4006.]

**3. Street Railroads (§ 103\*)—Contributory Negligence—Last Clear Chance.**—Where the evidence in an action for personal injuries showed that the accident occurred instantaneously with plaintiff's stepping upon defendant's street railroad track, and makes it clear that, if his danger was discovered or might have been discovered, it was not possible to have stopped the car in time to have avoided a collision, the last clear chance doctrine does not apply.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig., § 219; Dec. Dig., § 103.\* 10 Va.-W. Va. Enc. Dig. 389; 12 Va.-W. Va. Enc. Dig. 848.]

**4. Trial (§ 267\*)—Instructions—Modification by Court.**—In an action against a street railroad for injuries to a person on its track, the court's modification of defendant's instructions as to contributory and concurrent negligence by appending the last clear chance doctrine to the instructions is error, as the instructions were intended to present defendant's theory of the case, and should have been given without qualification.

[Ed. Note.—For other cases, see Trial, Cent. Dig., §§ 668-672; Dec. Dig., § 267.\* 10 Va.-W. Va. Enc. Dig. 412.]

**5. Street Railroads (§ 93\*)—Care in Operation of Road—Care at Crossing.**—Where the view of the street railroad crossing is obstructed, it imposes upon the railroad the reciprocal duty of using special precautions, depending upon the particular location and circumstances, to avoid accident.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig., §§ 195-200; Dec. Dig., § 93.\* 4 Va.-W. Va. Enc. Dig. 127.]

**6. Street Railroads (§ 98\*)—Care of Person Crossing Track—View of Crossing Obstructed.**—Where the view of a street railroad crossing is obstructed, it imposes upon a person crossing the track the reciprocal duty of using a higher degree of caution, depending upon the particular location and circumstances, to avoid injury.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig., §§ 204-208; Dec. Dig., § 98.\* 4 Va.-W. Va. Enc. Dig. 127.]

**7. Street Railroads (§ 93\*)—Actions for Injuries—Instructions.**—An accident, by which plaintiff sustained injuries while crossing the track of a street railroad at the intersection of streets adjacent to

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

a square, is so near a crossing as to bring it within the law applicable to crossing cases.

[Ed. Note.—For other cases, see Street Railroads, Dec. Dig., § 93.\* 4 Va.-W. Va. Enc. Dig. 128.]

**8. Street Railroads (§ 118\*)—Actions for Injuries—Instructions—Contributory Negligence.**—An instruction in an action for injuries sustained on a street railroad crossing, which denies a recovery to plaintiff if he failed to use ordinary care and caution at the time of and prior to the accident, is erroneous because its omission to state that the assumed failure of the plaintiff to exercise ordinary care, must have efficiently contributed to the injury.

[Ed. Note.—For other cases, see Street Railroads, Dec. Dig., § 118.\* 4 Va.-W. Va. Enc. Dig. 135; 10 Va.-W. Va. Enc. Dig. 386.]

**9. Street Railroads (§ 117\*)—Contributory Negligence—Looking and Listening.**—It is not negligence as a matter of law for a person to go upon a street car track without looking and listening.

[Ed. Note.—For other cases, see Street Railroads, Cent. Dig., §§ 248-250; Dec. Dig., § 117.\* 4 Va.-W. Va. Enc. Dig. 140.]

**10. Trial (§ 243\*)—Instructions—Self-Contradictory Instructions.**—Requested instructions in an action for injuries on a street car track, that it was not negligence for a person to go upon the track without looking and listening, but that the law required that a person must use due care and must look and listen before going on the track, especially where the approach is partially obstructed, are self-contradictory, and properly refused.

[Ed. Note.—For other cases, see Trial, Dec. Dig., 243.\* 7 Va.-W. Va. Enc. Dig. 729.]

**11. Trial (§ 260\*)—Instructions—Instructions Already Given.**—The refusal of requested instructions as to questions dealt with and covered in instructions already given is proper.

[Ed. Note.—For other cases, see Trial, Cent. Dig., §§ 651-659; Dec. Dig., § 260.\* 7 Va.-W. Va. Enc. Dig. 742.]

Error to Corporation Court of City of Roanoke.

Action by John O. Carroll against the Roanoke Railway & Electric Company and the City of Roanoke. Action discontinued as to the City of Roanoke. Judgment for plaintiff, and defendant Roanoke Railway & Electric Company brings error. Reversed and remanded for new trial.

*Hall, Woods & Jackson*, for plaintiff in error.

*Hairston, Hairston & Willis* and *Scott, Altizer & Watts*, for defendant in error.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.